IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 2169 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

==========

BAI KHETI WD/O NANJI DHULIA & 4 - Appellant(s)
Versus
FAKRUDDIN ISAMMUDIN SHAIKH & 2 - Defendant(s)

==========

Appearance :
MR RN SHAH for Appellant(s) : 1 - 5.
NOTICE SERVED for Defendant(s) : 1 - 2.
MR SUNIL B PARIKH for Defendant(s) : 3,

==========

CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/07/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellant has challenged the judgment and award of the Motor Accident Claims Tribunal (Auxi.), Kheda at Nadiad passed in M.A.C.P. No.730 of 1981 dated 15.09.1983.

2.0 The brief facts of the case are that the deceased Nanjibhai Dhulia was working on the truck owned by present opponent No.2. On

05.09.1981, when the deceased was coming in the said truck driven by opponent No.1 from Ankleshwar after delivering the cement, the said truck went turtle near Hamidpura. On account of the said accident, the deceased expired on the spot. Therefore, heirs and legal representatives of the deceased filed a petition claiming Rs.75,000/- by way of compensation.

2.1 In the said petition, after hearing the parties, the Tribunal passed the judgment and award which is under challenge in this appeal.

3.0 Learned Advocate for the appellants has submitted the Tribunal ought not to have held that the liability of the Insurance Company is limited to the extent as laid down under Workmen's Compensation Act. He has further submitted that the Tribunal ought to have granted higher rate of interest instead of six per cent.

4.0 On the other hand, learned Advocate for

the present opponent No.3 has supported the order of the Tribunal, and has, contended that the Tribunal has rightly observed that the liability of opponent No.3 is limited under Workmen's Compensation Act, and hence, no case is made out calling interference of this Court.

5.0 Heard, learned advocate for the appellants as well as for opponent No.3. Though, served none appears on behalf of the opponent Nos.1 and 2. It is not in dispute that on the day of accident the deceased was traveling on the truck driven by opponent No.1- and when they reached near Hamidpura, a truck came from opposite direction with full head-lights on, and hence, opponent No.1 swerved his truck in the 'kutcha' road which was wet and slippery due to rain, on account of which the said truck went turtle and the accident in question took place. The said fact is also supported by deposition of the opponent No.1 produced at Exh.36, F.I.R. of the incident produced at Exh.26 and 'Panchnama'

of the scene of offence Exh.27. I am, therefore, of the opinion that the Tribunal has justified in holding opponent No.1 solely responsible for occurrence of accident in question.

5.1 Before proceeding with the matter, here, it would be relevant to refer to a decision of the Apex Court passed in the case of ***"Ramashray Singh Vs. New India Assurance Co. Ltd. And Others"*** reported in (2003)10 SCC 664 wherein it was observed that under Section 147(1)(b) proviso and Section 146 of the Motor Vehicles Act, 1988 the expression 'Third Party Risk' as specified in sub-clauses (i) and (ii) of Section 147(1)(b) covers only a driver, a conductor or an examiner of tickets and no other employee such as cleaner(khalasi), and mere fact of insurance policy specifying that insurance had been paid by the appellant owner for "seating capacity including driver and cleaner" (13 passengers + 1 driver)does not meant that cleaner could be included as passenger for imposing liability on

the Insurance Company.

5.2 In the case on hand, the appellants have stated that the deceased was working as labourer on the offending vehicle. The said fact has been admitted by opponent No.1 vide his written statement Exh.14. Hence, in view of the fact that the deceased was an employee of opponent No.2 and in view of the principle laid down by the Apex Court in the case of ***Ramashray Singh*** (Supra), I am of the opinion that the Tribunal has rightly observed that the liability of the Insurance Company is limited under the Workmen's Compensation Act.

5.3 As regards the contention of the learned Advocate for the appellants for higher rate of interest is concerned the same deserves to be rejected, in view of the fact that it was the consistent practice of the Courts/Tribunals prior to 1st October, 1982 to award six per cent interest in claim petitions. In the case on hand

the accident in question took place in the year 1981, and hence, the Tribunal has rightly awarded the interest at the rate of six per cent. Hence, the present appeal deserves to be dismissed.

6.0 In the result the appeal stands dismissed. No order as to costs.

(K.S. Jhaveri,J.)

Umesh/